

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 5796 OF 2019**

Kanhaiya Lal Yadav S/o Shri Lakhan Lal Yadav Aged About 63 Years R/o Tikrapara, Yadav Mohalla, Bilaspur, Tahsil And District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through It's Secretary, Department Of Home/ Police, Mahanadi Bhawan, Mantralaya, Police Station And Post- Rakhi, Atal Nagar, Raipur, District Raipur Chhattisgarh
2. Joint Director Office Of Divisional Joint Director, Funds, Account And Pension, Raipur, District Raipur Chhattisgarh
3. Inspector General Of Police (Igp) Office Of Inspector General Of Police Shankar Nagar, Raipur, District Raipur Chhattisgarh
4. Superintendent Of Police (SP) Office Of Superintendent Of Police (SP) Balodabazar-Bhatapara, District Balodabazar-Bhatapara Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Abhishek Pandey with Ms. Aarti Manjhi, Advocates
For State	:	Shri Chandresh Shrivastava, Dy. A. G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

06.08.2019

1. The order under challenge is to the Annexure (P-5) 08.07.2019 whereby the respondents have issued an order of recovery for an amount of Rs. 2,25,935/-. The notice of recovery in respect of certain excess payment paid to the petitioner while he was in service.
2. The facts of the case is that the petitioner retired from service on the post of Inspector w.e.f. 30.06.2019, the petitioner on the date of retirement was holding Class-3 post, the Petitioner while he was in service just before his retirement on 22.06.2019 was issued with an order (Annexure P-2) intimating the petitioner that there is an excess payment paid to him for an amount of Rs. 3,88,466.00/-. The

petitioner immediately made a representation to the Authorities concerned. On due consideration of the representation the impugned order Annexure (P-5) dated 08.07.2019 has been passed and the amount of recovery stood reduced from Rs. 3,88,466.00/- to Rs. 2,25,935/- which has been ordered to be recovered from the dues payable to the petitioner on his retirement.

3. The said excess payment from the perusal of document (Annexure P-3) would show that the said excess payment arose on account of wrong fixation of pay provided by respondents to the petitioner. It also reveals that the wrong fixation of pay was given effect way back in January, 1994 it continued till the retirement of the petitioner till June, 2019. Thus, first erroneous fixation of pay was given effect in January, 1994 i.e. around 25 years prior to the petitioner having retired from service. The order (Annexure P-2) dated 22.06.2019 is also an order which has been passed just about a week ago before the petitioner was to retire from service.
4. According to the petitioner, the said action of recovery by the respondents is impermissible under the law. According to the Petitioner, the order of recovery deserves to be vitiated in the light of the Judgment of the Supreme Court in the case of **“State of Punjab and others etc. Vs. Rafiq Masih(White Washer) and others.”** reported in 2015 AIR SCW 501.
5. The further contention of the petitioner is that firstly, the petitioner was not in any manner responsible for getting the higher pay-scale that the respondents have granted or erroneous fixation of pay that has been done by the respondents and he further contended that

the petitioner is a class-3 employee and the recovery has been initiated immediately before his retirement while the settlement is being done and for this reason, the order impugned is bad in law deserves to be and is accordingly set aside.

6. The State Counsel on the other hand opposing the petition submits that it is only immediately before his retirement while the settlement was being done that it was detected an erroneous fixation of pay was granted to the petitioner and by virtue of the first said erroneous fixation of pay, the petitioner has been paid excess amount of Rs. 2,25,935/- . It is further contention of the State Counsel that admittedly, the petitioner has received something excess than what he has otherwise legally entitled for and therefore, the action on the part of the respondents in recovering the said excess amount can not be said to be bad in law.
7. Having heard the contentions put forth on either and on perusal of the record, it would be relevant at this juncture to take note of the judgment of the Hon'ble Supreme Court in the case of **"Rafiq Masih"** (supra). The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery has been held to be impermissible under law. The situations as envisaged in the said judgment are as under :-

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. If we take into consideration the aforesaid situations, it would clearly reveal that the case of the petitioner also fits in the situations so envisaged by the Hon'ble Supreme Court. The recovery was being made at the time of his retirement. The petitioner was not responsible for the erroneous fixation which was granted to him. The error first crept in 25 years prior to the date of recovery order. Moreover, the petitioner was an employee of Class-III post. It also reveals that the respondents have not given an opportunity of hearing to the petitioner before issuance of the impugned order of recovery. Thus, in the light of the judgment of the Supreme Court in the case of **"Rafiq Masih"** (supra), the action on the part of the respondents is bad in law, contrary and is not sustainable.
9. Accordingly, the impugned order (Annexure P-5) dated 08.07.2019 deserves to be and is accordingly set aside/quashed, it has been informed that the respondents till date have not made any recovery hence, the respondents are directed to ensure the entire retiral benefit dues payable to the petitioner be released without any recovery from the said impugned order being made at the earliest.
10. It is made clear that the impugned order is being set aside only so far as the recovery is concerned. However, so far as the

rectification part of the erroneous payment is concerned that is not being interfered by this Court.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha